

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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:
UNITED STATES OF AMERICA, : Criminal Action No.
:
versus : 1:20-cr-142
:
MELVIN PALMA FLORES, : September 7, 2022
:
Defendant. :
-----x.

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE ROSSIE D. ALSTON, JR.
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

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United States District Court
401 Courthouse Square
Tenth Floor
Alexandria, VA 22314

PROCEEDINGS

(Court proceedings commenced at 11:33 a.m.)

THE DEPUTY CLERK: Criminal Case No. 20-142. United States of America versus Melvin Palma Flores.

Counsel, state your appearances for the record.

MR. BEN'ARY: Good morning, Your Honor. Michael Ben'Ary and Katherine Rumbaugh for the United States.

THE COURT: Good morning.

MS. RUMBAUGH: Good morning.

MR. JENKINS: Good morning, Your Honor. May it please the Court. Robert Jenkins on behalf of Mr. Melvin Palma Flores.

THE COURT: Good morning, sir.

THE INTERPRETER: Does he need an interpreter?

MR. JENKINS: He does not.

THE COURT: Thank you, Ms. Horvath.

Let the record reflect that Mr. Melvin Palma Flores is also present.

This matter comes on today for report and sentencing. Are there any corrections, deletions, or modifications to the presentence report in this matter?

MR. JENKINS: There is not, Your Honor, but there still is a preliminary matter that I believe the Court needs to resolve before advancing to sentencing.

THE COURT: Sure. This is your motion for judgment

1 of acquittal?

2 MR. JENKINS: It is, Your Honor.

3 THE COURT: All right. I'll hear from you on that,
4 sir.

5 MR. JENKINS: Your Honor, I will be brief because I
6 believe that both parties have adequately briefed the issue
7 for the Court. I'll start where I think there's little room
8 or separation between the parties and that is, that with
9 respect to the two items that the defendant now complained
10 were not provided in discovery. I think it is accurate to say
11 that those two items were not specifically provided. And the
12 government does draw a slight distinction with the first item,
13 that being the medical records. The government's position is
14 that while that particular record was not provided in a manner
15 in which the defense could employ it, that the -- essentially
16 the same information through another means was provided. And
17 that is that Ms. Sheehy, who we continue to maintain, was the
18 most significant witness who testified on behalf of the
19 government, was impaired at the time that she gave her initial
20 account to law enforcement implicating the defendant in the
21 murder of Mr. Brown.

22 I don't think I need to remind the Court about the
23 substance of her testimony or the significance of it. But I
24 will note for the Court that she was the first individual who
25 implicated Mr. Palma Flores in the murder of Mr. Brown.

1 We think it's critically important, Your Honor,
2 because this medical record, while the government may be
3 correct in that there were other -- at least one other piece
4 of information provided in discovery that suggested that she
5 may have been intoxicated at the time. And when she spoke
6 with the detective initially back in December, we think
7 particularly this piece of evidence, Your Honor, which was not
8 provided, is distinguishable. Because this is not an account
9 of her reporting to law enforcement that she was intoxicated,
10 but instead, she was making a report to a medical healthcare
11 provider, concerning the state that she was in at the time
12 that she spoke to law enforcement and she went a little bit
13 further than that in this situation, Your Honor. She also
14 described that the law enforcement agents -- excuse me -- at
15 least the detective had pressured her to implicate Mr. Palma
16 Flores. And, of course, Your Honor, that was --

17 THE COURT: Let me ask you a question, Counsel, and
18 I appreciate your representations. And I remember
19 specifically this trial and the testimony that was provided,
20 and I also remember the excellent job that you did
21 cross-examining that particular witness and using the
22 impeachment evidence that you're making reference to at this
23 time. Essentially, the question I am asking is, with your
24 very good cross-examination and the fact that this witness's
25 credibility at least in the Court's view was undermined

1 somewhat, isn't it ultimately up to the jury to weigh the
2 evidence in light -- based upon the standard that they are
3 supposed to weigh it, they could give that testimony a lot of
4 credit, they could discredit it entirely, we don't know how
5 juries stand. I do know that as a person who was able to hear
6 the testimony of that particular individual, that you did a
7 good job, an excellent job discrediting her, and the jury may
8 have had a different perspective, I don't know. But at least
9 the information that you're making reference to was before the
10 fact-finder and would be something that they could actually
11 evaluate in determining whether or not what weight of evidence
12 they wanted to give to that particular evidence.

13 MR. JENKINS: Well, Your Honor, certainly I
14 appreciate and thank the Court for your compliment concerning
15 my performance in cross-examining Ms. Sheehy. But, however,
16 Your Honor, given the importance and the role that she played
17 in this matter, I needed all of my ammunition in order to deal
18 with her. And to deny me even one bullet in the chamber, Your
19 Honor, to speak, it's something that is a disservice to
20 Mr. Palma Flores. Yes, she admitted on cross-examination
21 about, you know, reluctantly providing information about
22 Mr. Palma Flores, their extended relationship, the ups and
23 downs of that relationship. All of which the jury could have
24 concluded may have made her testimony questionable. But, Your
25 Honor, remember the -- the government chose to put on

1 affirmative evidence by the summary agent in which the agent
2 denied ever pressuring Ms. Sheehy into making any statements,
3 and here it is we have her reporting to a healthcare provider.
4 Not someone that you would think she was making these
5 statements because she was trying to advance any interest
6 other than her own medical condition. And she's reporting to
7 the fact that she was intoxicated.

8 Your Honor, I think if I had that available to me,
9 along with the other evidence that I did have available to me,
10 Your Honor, it certainly could have made a difference. In my
11 view, Your Honor, it's inexcusable. I mean, I don't think it
12 was intentional. But the fact is that it was not provided.
13 And if Ms. Sheehy --

14 THE COURT: How do you evaluate your position in
15 light of the chamber's factors that the Court must consider in
16 the determination of whether or not a new trial should be
17 granted?

18 MR. JENKINS: Well, you know, certainly, Your Honor,
19 I think that the Court -- probably the toughest criteria for
20 me to overcome is the difference that it would have made in
21 light of the weight of the other evidence as well as, as the
22 Court has already identified, the cross-examination that
23 was -- that she was subjected to. But I don't think that
24 changes the fact, Your Honor, that this is a violation of the
25 discovery order. It is a violation of Rule 16, and I would

1 submit Giglio also. And it's something that Mr. Palma Flores
2 was entitled to. And for the government to breach its
3 obligation but then after the fact say, Well, it wouldn't
4 really have made a big difference, I think undercuts the
5 spirit of the discovery order and what the rules were in
6 place. Countless times I've come before Your Honor
7 encouraging the Court to enter, you know, an order directing
8 the government to provide exculpatory evidence or some other
9 materials that, I think, is relevant and the Court generally
10 responds by saying, Well, Mr. Jenkins, they know their
11 obligation and I trust that they are going to live up to their
12 obligations, so, therefore, I understand your concerns but the
13 Court is not going act.

14 Well, here is a clear situation where whether it was
15 intentional or not, the government failed to turn over not one
16 but two pieces of -- of information that would have been
17 discoverable. The target letter, Your Honor, is not a small
18 thing. I did not know at the time I was cross-examining
19 Ms. Sheehy that she was the focus of the criminal
20 investigation at any point in time.

21 THE COURT: So you're saying that you were not aware
22 that there was a target letter relating to her?

23 MR. JENKINS: I was not aware, Your Honor. And the
24 government does not dispute in his responsive pleading that it
25 was provided. That's not what they say. What they're saying

1 is to the Court that, Well, the defendant, Mr. Melvin Palma
2 Flores, he knew about it because we've got this telephone call
3 between he and Ms. Sheehy well before I represented him, in
4 which she is disclosing to him that she received some letter
5 from the government about their investigation.

6 THE COURT: But doesn't that then come down to the
7 level of communication that should be expected between a
8 defendant and his lawyer? And keep in mind, there are some
9 other instances where I know you were surprised about things
10 that your client didn't even tell you about which undermined
11 his defense.

12 MR. JENKINS: Absolutely, Your Honor. And as I
13 submitted to the Court at that time, and I will restate in
14 this situation, Mr. Palma Flores is not a lawyer. He doesn't
15 understand what Giglio means, he doesn't understand what Brady
16 means, he certainly has never read Federal Rules of Criminal
17 Procedure 16. He cannot be expected to understand the import
18 of a target letter. A young lady having a telephone call with
19 him while he's detained at the Alexandria Detention Center
20 saying I got a letter from the government, something about the
21 investigation and they may be looking at me. He doesn't know
22 the significance of that. Six months or thereafter, he gets
23 me as his lawyer. I never think to bring it up to him because
24 I have no clue. And to a suspect that she may have gotten a
25 target letter. Am I supposed to have the affirmative

1 responsibility to come to each one of my clients and say, Hey,
2 by the way, this is a potential witness. Do you know if this
3 person has received a target letter? I failed to do that,
4 because I had no reason to think that she was. When she
5 contacted me the day after the jury verdict and provided the
6 letter to me, that was the first time I had ever seen it.

7 THE COURT: But isn't all of this sort of undermined
8 to a degree based upon the fact of your client's own actions
9 as to the way that this case has been processed, the fact that
10 he was convicted of tampering with a witness, the fact that he
11 was doing things that a jury found to be undermining the
12 entire process. And so why should he be able to now come in
13 and say, I was undermining the entire process, but it's not my
14 fault. It's actually a constitutional issue or a statutory
15 issue.

16 MR. JENKINS: Well, Your Honor, I would respectfully
17 submit that whatever bad acts or things that Mr. Palma Flores
18 may have done, it does not alleviate the obligations on this
19 side of the courtroom.

20 Federal prosecutors have a duty. They have a
21 responsibility to be consistent with discharging those duties
22 regardless of any bad actors that might be on the defense
23 side. And here was a situation where other target letters
24 were provided. This is the only one. This is the only one
25 that was failed to be disclosed.

1 THE COURT: Let me ask you this final question, and
2 I appreciate your presentation. Objectively looking at all of
3 the evidence in this case, could a jury have found your client
4 guilty even if this person didn't testify?

5 MR. JENKINS: Your Honor, as I've already conceded,
6 that's the most difficult hurdle for me to overcome. But as I
7 said, again, and remind the Court that I don't think the
8 government takes issue with this, while there was other
9 evidence, she was the star witness. And I think even during
10 the course of the trial, the Court may have also identified
11 her as that.

12 She's the first person that turned law enforcement
13 onto Mr. Palma Flores as committing the offense. There are no
14 eyewitness -- witnesses. She's the closest that can come by
15 saying she was seated in the vehicle, heard the shots, saw
16 Mr. Palma Flores get out of the vehicle, saw Mr. Palma Flores
17 return to the vehicle. But most importantly, she's the person
18 who testified that Mr. Palma Flores made certain incriminating
19 statements directly to her.

20 And she is the one who provided the interpretation
21 of the letter that she received purportedly from Mr. Palma
22 Flores that supposedly, again, served as the factual basis for
23 the obstruction of justice conviction that he -- that was
24 sustained returned by the -- by the jury. So she certainly is
25 way more significant than Mr. Worlds, who was, you know, kind

1 of limited. No forensic evidence tying back to Mr. Palma
2 Flores.

3 The significance of Ms. Sheehy's testimony cannot be
4 downplayed, Your Honor. And, therefore, the government had an
5 obligation to provide this target letter, to provide this
6 medical record, which is Exhibit Number 1. I don't know if
7 the jury definitively would have ignored it all or found it
8 just to be ancillary or cumulative. I don't know. I do know
9 that Mr. Palma Flores had a right to have access to the
10 information.

11 And whether it was unintentional or not, Your Honor,
12 the fact is he was denied it. And simply saying, Well, the
13 defendant, the uneducated high school guy, should have known
14 to tell his lawyer that this prospective witness got a target
15 letter. Before he got charged with this case, he wasn't even
16 familiar with the term "target letter." He doesn't even know
17 what it is. So to expect that he would have been the one to
18 come to me and say, Hey, Attorney Jenkins, my girlfriend told
19 me she got a target letter. I think it's unfair, Your Honor,
20 and it raises the bar where it shouldn't be placed on the
21 defendant to interpret the complicated federal statutes and
22 case law governing them and identify things that are important
23 that he's sure telling me where he was the night Mr. Brown was
24 killed, that's the fair expectation.

25 Telling me any information he may have that might

1 impeach an expected government witness, that would be fair,
2 and I believe he did those things. But understanding the
3 import of a target letter, and that he needed to share that
4 with his attorney, Your Honor, I think that's a burden that
5 shouldn't be placed on any defendant.

6 THE COURT: All right. I understand your point.

7 Mr. Ben'Ary.

8 MR. BEN'ARY: Your Honor, the star witness in the
9 trial was not Laila Sheehy. The star witness in the trial was
10 Mr. Melvin Palma Flores. There's not a chance that the jury
11 wouldn't have convicted after hearing his testimony in
12 connection with the letter. So I do take issue with the
13 importance of Laila Sheehy's testimony. She was important in
14 that she was an eyewitness to going to the scene, but you
15 remember her testimony, she was -- she was very upset during
16 her testimony, barely got out the testimony that she did get
17 out. So I do take issue with the notion that she was the star
18 witness.

19 Briefly on the two items that the defense complains
20 about. I note with respect to both of them while the actual
21 items that they complain about were not provided,
22 inadvertently, the information on both of them was provided.
23 And I think that the availability --

24 THE COURT: State for the record how you believe the
25 information was provided.

1 MR. BEN'ARY: Sure. So with respect to the medical
2 records, Ms. Sheehy sent them in a text message to our police
3 detective, Melissa Wallace. We provided that text message to
4 the defense but because of a glitch in the way that computers
5 work, they came through as files, but the content of the file
6 wasn't available. We didn't realize that until we went back
7 after Mr. Jenkins said that he didn't get the medical
8 information. Right -- and we sent this out in our responsive
9 pleading. Right after Mr. Sheehy sent the medical records to
10 Detective Wallace, she followed up with a text in her own
11 words that says exactly what the medical records say that she
12 was high and under the influence and upset during the first --

13 THE COURT: For taking Mr. Jenkins's point, while
14 that information may have been made available in some other
15 context, Mr. Jenkins takes issue with the fact that it was the
16 government's responsibility to provide this information and
17 that the information not be provided through some third party.

18 MR. BEN'ARY: It wasn't provided from a third party.
19 It was provided by Ms. Sheehy -- it was -- we turned over her
20 text message where she says, "I was intoxicated during this
21 first interview with Detective Wallace." So that would be
22 Jencks.

23 THE COURT: Uh-huh.

24 MR. BEN'ARY: The medical tech who took her report
25 at the hospital or wherever she went, that is not Jencks

1 because that's the statement of the person taking the notes.
2 So we provided the Jencks Act information in the form of her
3 statement. I note that the whole theory of that first
4 interview being coerced was invented by Melvin. It's in his
5 letter. That was one of the ways that he was going to explain
6 how all of this was, you know, made up because of the force
7 and pressure put on by the police department. So none -- the
8 information is not a surprise. They had the Jencks
9 information that mirrors the information in the medical
10 records by the witness's own statement in her own text message
11 to Detective Wallace. And on top of that, the interview
12 itself with Detective Wallace was fully recorded. And that
13 recording was provided to the defense. So, you know, if there
14 was any veracity to this whole notion that it was a coerced
15 interview and she was so high and intoxicated, they had plenty
16 of information that they could have used to impeach Ms. Sheehy
17 on all of that. And the medical record itself, I would
18 submit, is actually -- does not fall under Jencks because it's
19 not her direct statement. Her text message that was provided
20 to the defense in discovery was and that satisfies the
21 government's burden with respect to providing that impeachment
22 information in Jencks Act information.

23 With respect to the target letter, just to give a
24 little context. As we were preparing to supersede the
25 indictment and listening to jail calls, it became very clear

1 that one of Mr. Palma's goals was to get Ms. Sheehy to change
2 her testimony. Ms. Sheehy is another, you know, young
3 individual not from a lot of means. And so, we believe that
4 it was in everyone's best interest for her to have the benefit
5 of an attorney. The only way to get her an appointed attorney
6 was to go through the target letter process.

7 Now, a couple of things to keep in mind on the
8 target letter. Number one, the target letter issued to
9 Ms. Sheehy could not have been used to show that she had some
10 kind of bias. And the reason that I say this is she appeared
11 in front of the grand jury in this case prior to receiving the
12 target letter, and that transcript was provided to defense
13 counsel. She testified at trial consistent with her testimony
14 in front of a grand jury. That is after she received the
15 target letter. So if her testimony remained the same both
16 before and after the target letter, I would submit that the
17 target letter here for this particular witness would not have
18 impeachment value because it could not have caused her to
19 change testimony based on bias.

20 We -- it was not in the sole possession of the
21 government as you heard. It was in Ms. Sheehy's possession.
22 And again, the information was disclosed, and I get
23 Mr. Jenkins's point. And I take his point about whether the
24 defendant is responsible for knowing the significance but --
25 but let me clarify. We know the defendant knew about it

1 because as soon as Ms. Sheehy got the letter, she called him
2 in jail on a recorded line and told him I got this target
3 letter.

4 THE COURT: But taking Mr. Jenkins's point to its
5 natural circumstance is that I know what the target letter
6 is --

7 MR. BEN'ARY: Yup.

8 THE COURT: -- you know what a target letter is,
9 Mr. Jenkins knows what the target letter is.

10 MR. BEN'ARY: Yup.

11 THE COURT: What is the defendant supposed to think
12 as to the significance in his defense as to a target letter?

13 MR. BEN'ARY: Completely agree. But here is -- here
14 is what I would ask the Court to keep in mind. That recorded
15 call between the defendant and Ms. Sheehy was provided to
16 Mr. Jenkins in discovery.

17 THE COURT: Okay. So while he may not have had in
18 his possession the target letter, the substance of the target
19 letter was discussed in a telephone conversation between
20 Ms. Sheehy and Mr. Palma Flores, which outlined to a
21 significant degree the circumstances of what that target
22 letter was about.

23 MR. BEN'ARY: Explicitly. She said, "I got a target
24 letter." So if you're dealing now with the defendant's
25 recorded statements and recorded statements of the person that

1 Mr. Jenkins thinks is the star witness, I think it's fair to
2 expect that defense counsel would have reviewed it.

3 There was a lot of discovery provided, and I think
4 if the -- if this particular target letter had more
5 significance, we would have affirmatively produced it. I
6 think that because it was issued basically for the sole
7 purpose of getting her a lawyer so that she didn't engage in
8 obstructive conduct. She never did engage in obstructive
9 conduct. It's just simply when we did our review for Jencks
10 and Giglio, because it didn't have impeachment value because
11 she had never changed her testimony, we did not think to
12 provide it separately. However, I do think the fact that it
13 was -- that information was provided in that recorded call to
14 the defense and it wasn't -- it wasn't buried. I mean, I
15 don't think it's unfair for us to expect that defense counsel
16 would listen to the recorded statements of his client and the
17 star witness. I think that that satisfies it because if you
18 wanted to use that to impeach her, the information that she
19 had received a target letter was in the possession of the
20 defense.

21 THE COURT: All right. Thank you, Counsel.

22 Mr. Jenkins, one last question. And I'm going to
23 ask this question in the context of a Brady issue. And I know
24 this is not a Brady issue but --

25 MR. JENKINS: Yes, your Honor.

1 THE COURT: -- I just want to see what your response
2 would be.

3 If the government was in possession of a certain
4 Brady material. Say the government was in possession of
5 another person saying that they committed the crime, okay?
6 Obviously, the government would have the responsibility to
7 turn that over to you. But what if your client had said to
8 you, Hey, Joey Jones said that he committed this crime, and
9 I'm telling you this right now, and the government, for
10 whatever reason, inadvertently failed to turn over the
11 specific statement -- specific information supporting
12 Johnny Jones involvement with the crime, would we have a Brady
13 problem?

14 MR. JENKINS: Absolutely.

15 THE COURT: Okay. Explain why.

16 MR. JENKINS: And the reason why -- and the reason
17 why we still would have a Brady problem, Your Honor, is
18 because it's -- well, it's not uncommon for defendants to
19 report to defense counsel some exculpatory theory of their
20 defense. That's really -- I mean it happens almost every day.
21 For example, meet our client. I didn't do it; that's not
22 uncommon. But when a potential witness reports to law
23 enforcement --

24 THE COURT: Uh-huh.

25 MR. JENKINS: -- reports to the government

1 exculpatory evidence, that is Brady, they got to give it up no
2 matter what. It puts defense counsel in a position to do
3 further investigation to fret that out, to determine now I
4 don't just have my client saying he didn't do it. The
5 government now has a law enforcement witness, a prosecutor,
6 someone who took that statement from that individual saying my
7 client didn't do it.

8 THE COURT: Okay.

9 MR. JENKINS: Now, they get to call that person,
10 too.

11 THE COURT: And let me ask you this, and I've had
12 this happened, because, you know, I did defense work --

13 MR. JENKINS: Yes.

14 THE COURT: -- back in the olden days. And every
15 now and then my client would tell me something that I think
16 might be exculpatory. And typically, what I would do is I
17 would go to the government and I would say, Look, my client
18 has suggested to me that Johnny Jones did this, do you have
19 any information on your side suggesting that Johnny Jones may
20 have accepted responsibility for that. And actually,
21 sometimes the government would say we're going to follow up on
22 that and they would come back and say, Oh, yeah, yeah,
23 Johnny Jones told Officer Smith two years ago that he did it.

24 Does that create a Brady problem?

25 MR. JENKINS: I think, Your Honor, while certainly

1 there are times where I've been confronted with similar
2 situations, where my client or maybe through some other source
3 of information, I became concerned that the government may
4 have something that I should follow up on. It's not uncommon.
5 Sometimes I might reach out to who I believe to be a
6 government witness and the person might tell me something
7 inconsistent with what I read in a 302, I do the same as the
8 Court did when you stood in my shoes, that is follow up with
9 government counsel. In this situation, I really wasn't in
10 that same position, Your Honor. Say, for example, with the
11 first item, the medical tech who Ms. Sheehy was making this
12 report to about being intoxicated at the time she was
13 interviewed by the lead detective should have been disclosed
14 to Mr. Palma Flores. He could have issued a subpoena for that
15 medical tech. That medical tech may have served as a witness
16 for the defense, but because we didn't get the information.
17 Because we didn't even know it existed, Your Honor, that she
18 had made this report not to someone in law enforcement, not to
19 somebody who was a member of a medical -- excuse me -- of the
20 prosecution team, but to someone who was there for the purpose
21 of giving her medical attention. It should have been
22 disclosed. I haven't heard government counsel deny the fact
23 that these items should -- were covered by the discovery.

24 THE COURT: I think you both are on the same page as
25 far as that is concerned.

1 MR. JENKINS: In trying to, you know -- in my view,
2 you know, absolve itself from what has happened here and say,
3 Well, he had general access to the information or he had other
4 ways to get the information. That's just not the way the
5 rules are written. That's not the way Rule 16 is written.

6 The government, for example, in a drug case can't
7 fail to turn over a DEA6 lab report by excusing the fact that,
8 Well, Mr. Jenkins, we sent you an e-mail summarizing what the
9 drugs were. We say, Yeah, we believe it was cocaine and it
10 was about a thousand kilograms. The Court would still say
11 turn over the DEA6. You can't just say, Well, we gave it to
12 you through some other fashion. If the rule say that
13 defendant is entitled to it, turn it over.

14 I don't think the Court want to set a landscape
15 where government counsel is going to excuse not turn in over
16 reports, not turn in over what could potentially be Jencks or
17 Giglio material by saying, Well, we sent you an e-mail or it
18 was buried someplace else in the discovery; you could have
19 gotten it that way Mr. Jenkins, don't blame us. The
20 government carries a heavy burden. I mean, they really do.
21 Not just with the burden of proof, Your Honor, all the rules
22 that they have to comply with, the case law that they have to
23 be mindful of, but that's our system of justice. It's with
24 them. And in this situation, Your Honor, they failed to meet
25 that expectation.

1 THE COURT: All right, sir. Thank you.

2 MR. BEN'ARY: Just finally, to wrap up. If the
3 Court wants to find that we weren't careful enough with
4 discharging our discovery obligations in this case, I think
5 that would be one matter. The case law on cumulative
6 impeachment evidence makes granting a new trial under these
7 circumstances not the appropriate remedy. I don't -- I don't
8 think we violated our discovery responsibilities because the
9 defense had access to the information. There's notion of
10 subpoenaing the medical tech and having her testimony, that
11 would be impeachment with cumulative evidence. She never
12 would have been allowed to testify because it's inconsistent
13 with the rules of evidence. These are -- these are --

14 THE COURT: Just a second. Are you okay,
15 Ms. Rumbaugh?

16 MS. RUMBAUGH: Yes, Your Honor.

17 THE COURT: Okay. Just making sure. All right.

18 MR. BEN'ARY: These are impeachment matters on a
19 witness that was significantly impeached on related topics.
20 And out of all the government's witnesses in this case, this
21 is the one witness that the defense knew far more about than
22 the government did.

23 Child in common with the defendant, she was on the
24 phone with him for hours, even during the trial of the matter.
25 All of this stuff was better known to the defendant than it

1 was to the government. We provided a great volume of
2 discovery information, we interviewed Ms. Sheehy about her
3 drug use, we provided it. We went through the Fairfax County
4 police department's records on Ms. Sheehy and anything that
5 was potentially useful as impeachment material we provided.
6 We're talking about a computer glitch where files didn't come
7 through, but the information was right there along with it.
8 And we're talking about a target letter, which was used to
9 allow our access to court-appointed counsel where she never
10 changed her testimony before and after, and she discussed it
11 with the defendant just doesn't rise to the level of
12 impeachment evidence. For this witness that would require
13 doubt in the jury's verdict. The star witness in this case
14 was Mr. Palma largely by his attempts to subvert
15 responsibility for his crime.

16 THE COURT: Thank you, sir.

17 While the procedural circumstances that are
18 presented in the case are obviously somewhat troubling to this
19 Court, the Court finds that, number one, there was, in the
20 Court's view, no intentional effort to not provide this
21 evidence to counsel. The evidence in this case based upon the
22 Court's hearing of the evidence was overwhelming. And the
23 overwhelming nature of this evidence was underscored by the
24 defendant's positions in this matter, which were shall we say
25 at least fluid, if not outright wrong and having been

1 determined by the jury fact-finder of this case to be
2 deceptive under the applicable statutes.

3 Federal Rule of Criminal Procedure 33 and Fourth
4 Circuit authority in *United States v. Bales*, it's 813
5 F.2d 1289, and *United States v. Chavis*, set out the standard
6 for the Court to consider evidence in this regard. There are
7 certain five inquiries that need to be made. And according to
8 *Chavis*, unless the answer to each of the five inquiries is
9 affirmative, a new trial is not appropriate.

10 Applying these factors in this case, the evidence is
11 not in the Court's view, in fact, newly discovered evidence.
12 As the defense was in possession of all relevant information
13 from Exhibit 1 to defendant's motion as well as the fact that
14 Ms. Sheehy had been served with a target letter before trial.

15 Number 2, based on the facts alleged, this Court may
16 infer due diligence on the part of the movement and this
17 factor, therefore, weighs in defendant's favor.

18 The evidence the defendant cites is merely
19 cumulative or impeaching as the Court finds that the evidence
20 would have had minimal impeachment value at trial in light of
21 the fact that Ms. Sheehy's statement during the interview were
22 consistent with her grand jury and trial testimony and the
23 evidence is cumulative based upon Sheehy's other evidence of
24 impeachment defendant used at trial, because the impeachment
25 valued Ms. Sheehy's -- evidence is based on circumstances that

1 are limited at best, evidence is not material to the issues
2 involved; and five, and then most importantly, it is highly
3 improbable that the evidence will result in defendant's
4 acquittal at a new trial based upon the overwhelming evidence
5 of his guilt the government presented.

6 I agree with counsel for the government that the
7 star witness for the government, quite frankly, was Mr. Palma
8 Flores and his inconsistent and evasive way of presenting his
9 facts and circumstances of the case had nothing do with
10 Mr. Jenkins's due diligence or his inability to represent
11 Mr. Palma Flores as best he could. The bottom line is
12 Mr. Palma Flores's positions throughout the course of the
13 litigation undermine his defense and in another context of
14 these circumstances may be suggestive of the need for the
15 Court to make further inquiry.

16 So for those reasons, the request to grant a new
17 trial or set aside the trial or give judgment of acquittal is
18 denied. I note your exception, Mr. Jenkins.

19 MR. JENKINS: Thank you, Your Honor.

20 THE COURT: All right. Moving to the issue of
21 sentencing. Are there any corrections, deletions, or
22 modifications to the presentence report?

23 MR. JENKINS: No, Your Honor. May it please the
24 Court. Mr. Palma Flores has had an opportunity to review the
25 contents of the presentence report. In fact, a copy of it has

1 been provided to him, and we have no objections to the report,
2 Your Honor.

3 THE COURT: Any corrections, deletions, or
4 modifications from the government?

5 MR. BEN'ARY: No, Your Honor.

6 THE COURT: Counsel, I'm going to say something and,
7 again, it's something that I've -- I don't like to invent
8 issues, but it is something that has at least had me take a
9 step back. In a calculation of the guidelines, obviously,
10 individuals get credit for assisting the government in the
11 prosecution of the case. And in this instance, because
12 Mr. Palma Flores elected to have a jury trial, he does not get
13 any consideration for that.

14 In the Court's view, it at least raises some
15 constitutional concern of the defendant's right to exercise
16 his right to a jury trial and not be, in effect, penalized for
17 not entering a plea of guilty or assisting authorities in the
18 prosecution of his case. In this case that determination is
19 significant, because if he did get the, quote, "cooperation"
20 credits, it would reduce his guidelines taking it down
21 considerably. I think it resulted -- excuse me -- being
22 somewhere around 360 months.

23 Again, this is a statutory consideration, the
24 legislature is entitled to make those determinations and
25 decide what is right. But I will say for the record that it

1 is troubling to the Court that a defendant, by exercising his
2 constitutional rights -- and again, I know there's no
3 authority for this, but I'm concerned about the circumstances
4 that were presented particularly when we're dealing with a
5 young man who is facing a significant exposure on sentencing.

6 MR. BEN'ARY: Can I briefly address this?

7 THE COURT: Sure.

8 MR. BEN'ARY: So I actually don't think it would
9 make a difference in this particular case --

10 THE COURT: Uh-huh.

11 MR. BEN'ARY: -- even if the two levels were
12 applied. And let me just briefly run it down. And if I'm --

13 THE COURT: Sure.

14 MR. BEN'ARY: -- if I'm off the mark, I don't --
15 this is a little bit unusual for a narcotics case to be
16 dealing with guidelines in this area. But if you look at the
17 presentence report in -- hang on a second.

18 If you look at the presentence report, essentially,
19 what happens is because it ends up being a total offense level
20 45 --

21 THE COURT: Uh-huh.

22 MR. BEN'ARY: -- the guidelines cap it. One of the
23 comments says it should be reduced to a 33.

24 THE COURT: 43.

25 MR. BEN'ARY: 43. 43.

1 THE COURT: Okay.

2 MR. BEN'ARY: So in effect, he gets two points for
3 free. If he got the two points off of acceptance from the 45,
4 it would be down to the 43 anyway?

5 THE COURT: And we'd be at the same point.

6 MR. BEN'ARY: And we end up exactly at the same --
7 at the same point.

8 THE COURT: Why is that anomaly present when you've
9 got a situation like this? It's a 45 offense and it's
10 statutorily capped at 43, which then provides a bit of
11 confusion for the Court.

12 MR. BEN'ARY: Yeah. But it -- once you get to 43,
13 that's -- that's the literal top of the chart. So if -- not
14 to use the word "literal" or "literally" too much, but if
15 you're a 44 or a 45, you're literally off the charts. So it
16 doesn't -- if you're 45 and -- or 43, the guidelines are going
17 to come out exactly the same no matter what your criminal
18 history category.

19 THE COURT: Does the probation department agree with
20 that analysis?

21 THE PROBATION OFFICER: Yes, Your Honor.

22 THE COURT: Yes.

23 THE PROBATION OFFICER: So this is a situation
24 where -- and under Chapter 5, it does say anything above 43 is
25 treated as a level 43, and then automatically it drops it back

1 to a 43 that we use in our office.

2 THE COURT: But you agree with Mr. Ben'Ary that if
3 this had been traditionally calculated, the defendant would
4 have come out to 45?

5 THE PROBATION OFFICER: It still is traditionally
6 calculated if you look within, it does give you the level 45,
7 but then once it gives you the total offense level, it drops
8 it back. But he is technically a level 45 --

9 THE COURT: Okay.

10 THE PROBATION OFFICER: -- but treated as a 43.

11 THE COURT: Okay. All right. Thank you.

12 Mr. Jenkins, did you have a comment on this, sir?

13 MR. JENKINS: No, Your Honor. But I remember the
14 time when that was not the case, and you could have a
15 defendant at a level 45, and applauded (sic) as all members of
16 the defense bar when the statute came into play to limit it to
17 43. At this point in time, Your Honor, it's really academic.
18 It is what it is. Be as it 43.

19 THE COURT: Okay. I appreciate your candor on that,
20 Mr. Jenkins.

21 And, Mr. Ben'Ary, I appreciate you and the probation
22 department providing the Court some information to at least
23 address the Court's concern about situations such as this.
24 Because, you know, those people who appear before me know that
25 I take each case individually seriously, and I want to make

1 sure that the appropriate remedy is provided for each person
2 who is facing the worst day of their life when it comes to a
3 sentencing event. So I do appreciate the representations
4 made.

5 Is there any evidence that the government wishes to
6 present at this time?

7 MR. BEN'ARY: There's no evidence. We do have two
8 family members of Mr. Brown in court that wanted to address
9 the Court at the appropriate time.

10 THE COURT: Mr. Jenkins, do you have any problem
11 with them doing that now?

12 MR. JENKINS: I do not, Your Honor. I believe they
13 are entitled to by statute.

14 THE COURT: All right. And I'm not going to require
15 them to be under oath. Do you have any problem with that,
16 sir?

17 MR. JENKINS: I do not, Your Honor.

18 THE COURT: All right. You can recognize those
19 individuals, and then they can address the Court.

20 MR. BEN'ARY: Your Honor, the two individuals are
21 Katherine Mackenzie (ph), who was Xyqwavius Brown's aunt; and
22 Erica Vinny Brown, Mr. Brown's mother.

23 THE COURT: Okay.

24 MR. BEN'ARY: I would propose hearing from
25 Ms. Mackenzie first and then Ms. Brown afterward.

1 THE COURT: Ms. Mackenzie, you can come forward and
2 stand at the bar right before you come into the well. And
3 anything you think appropriate to say to the Court, you can
4 say at this time, now. Right there is fine.

5 MS. MACKENZIE: Okay.

6 THE COURT: If you're fully vaccinated and you want
7 to, you can remove your mask.

8 MS. MACKENZIE: Oh, yeah. Thank you, sir.

9 THE COURT: Yes, ma'am.

10 MS. MACKENZIE: I just wanted the Court to know
11 about my nephew, Qwa. What kind of child he was growing up,
12 all the things he liked to do. He liked to play basketball,
13 swimming, he used to do gaming. He was just a loving and
14 caring young man. And he had so much potential to do all kind
15 of wonderful things in life.

16 In fact, my son and him are the same age. And the
17 day before this happened, he called my son and asked to come
18 play -- do you want to come play basketball? And my son had
19 to go to work, because he was going to come over, play
20 basketball, spend the night, hang out at my house. And I'm
21 always wondering, could something could have been different
22 that day to make this not happen.

23 THE COURT: One of the things that we always do as
24 parents -- and I'm a parent, too. One of the things that we
25 always get concerned about is the things that our children can

1 get caught up in because they don't have the experience of
2 wisdom, and they don't have the experience of life. And I'm
3 sure you're aware that part of things that got your loved one
4 caught up in this was the fact that he was in a culture out
5 there that was bad and it was dangerous and it had mortal
6 consequences for him.

7 MS. MACKENZIE: It did. It really did. Because
8 when you're young, you make bad decisions. But we have to
9 learn not to do those things over and over again. She's
10 heartbroken.

11 THE COURT: I understand.

12 MS. MACKENZIE: I'm trying to keep her alive.
13 Because it's hard when you lose a child before they -- they
14 are supposed to go. And dealing with abuse and drugs,
15 alcohol, are the things that happen in this world today, but
16 you have to just pray for each other, you know. And I do kind
17 of forgive the young man who did this, and I pray that in the
18 future, if he does ever have a future, that he will learn from
19 it and not come back in this world to do things he did or
20 forget. But I also have to ask for justice for my nephew on
21 his behalf because he's not here.

22 Even though some of the things that he did might
23 have not been, you know, things that he shouldn't have done,
24 but nobody deserves to die just for a senseless crime when you
25 could have thought about other ways of doing things besides

1 killing someone. When you take somebody's life, you can't
2 take it back. You can't bring it back. You can't take that
3 act back.

4 THE COURT: Someone once said to me it's not a video
5 game where you can kill somebody and you can hit the reset
6 button and they get back up.

7 MS. MACKENZIE: Yeah. Thank you, Your Honor.
8 You're absolutely right. It's not like that. So you can't
9 reset your life. But I pray for him.

10 THE COURT: I appreciate your statement to the
11 Court, ma'am. And I can imagine how difficult it is. I've
12 been blessed to not have to stand up and address something
13 like this when I've lost a loved one, but I understand the
14 depth of your grief and I will pray for you, too.

15 MS. MACKENZIE: Thank you so much.

16 THE COURT: Yes, ma'am.

17 MS. MACKENZIE: Please pray for his mother -- for
18 Qwa's mother because she's going through a lot right now, and
19 I want to try to keep her alive now.

20 THE COURT: Okay. That's going to be an awesome
21 responsibility, but that's what we do with someone that we
22 love. We do the best we can with what we can.

23 MS. MACKENZIE: Yeah. Qwa wants her to stay here
24 with us, not on the other side where he is.

25 THE COURT: Yes, ma'am.

1 MS. MACKENZIE: We want her to stay here, and --

2 THE COURT: What I'll do, ma'am, now is hear from
3 her. If she would like to address the court. You can stand
4 by her, if you would like.

5 Ms. Tinsley, if you could assist the ladies.

6 (Mother and aunt holding up a blanket.)

7 MS. BROWN: I shouldn't have a blanket -- (crying.)

8 I should have him here with me. He did nothing. He
9 did nothing to you. And you took his life and you took mines,
10 too. I just came from PIW two days ago and I didn't --

11 MS. MACKENZIE: PIW is a place where you go when you
12 are -- when you want to take your own life because you can't
13 live with life like this. This is what it causes a mother to
14 do sometimes.

15 MS. BROWN: My son, he was loved and he has little
16 brothers that don't understand why he can't see his big
17 brother no more. They are children. It's not a game. And
18 you did that. You are playing a game with my son's life. I
19 did research, you are a gang leader. You hosted drugs. You
20 make more money than the judge do. You took my son away from
21 me. For what? For what? He did nothing to you. The people
22 that did something to you are still out here in these streets,
23 but my son is not here anymore. You know right from wrong.
24 You made a choice. It's no justice. It's no justice.

25 THE COURT: Ma'am, let me say this to you, while I

1 have never had to bear the burden that you've had to bear in
2 losing a child, I have lost loved ones.

3 MS. BROWN: Yes.

4 THE COURT: And the closest people to me that I've
5 lost are my mother and father.

6 MS. BROWN: They are not going to come back.

7 THE COURT: They are not going to come back, and
8 they did not die the way that your son did. But what gives me
9 the ability to get through those days when it's tough, when I
10 think about them not being in here, is I celebrate what I had
11 rather than dwell on what I lost. That is the best way to get
12 through a day --

13 MS. BROWN: And I try --

14 THE COURT: -- just celebrate what you have.

15 MS. BROWN: And that's -- everybody keeps saying
16 those words to me, too. It's words. My son said, words. He
17 does not deserve to lose his life by saying words.

18 THE COURT: And I agree with you, ma'am. That is no
19 doubt.

20 MS. BROWN: So, what, 100 years? No. There's no
21 life. No life for a life. He's not coming back.

22 THE COURT: All right, ma'am. Well, I will tell you
23 this. As part of the determination that this Court is going
24 to make, I've heard and I've listened to what you had to say
25 today. And it will be taken into consideration.

1 MS. BROWN: Justice.

2 THE COURT: I thank you for providing that
3 information to me.

4 MS. BROWN: That's not justice to me.

5 MS. RUMBAUGH: Your Honor, the victim's sister,
6 Janay Brown (ph), is here as well. And I believe she wishes
7 to address the Court as well.

8 THE COURT: Yes, ma'am.

9 MS. RUMBAUGH: Very briefly, Your Honor. Before she
10 comes up, I'll note that the victim's grandmother,
11 Joyce Brown, who testified at the trial, very much wished to
12 be here today but it would simply be too hard on her, but the
13 Court has her letter.

14 THE COURT: Yes. And it will be made part of the
15 record.

16 MS. RUMBAUGH: Thank you, Your Honor.

17 THE COURT: As will all the other sentencing
18 materials.

19 Yes, ma'am.

20 MS. J. BROWN: Hi. I'm Janay Brown. And Xyqwavius
21 was my brother, my little brother. And we were close growing
22 up. People thought we were twins. And Qwa taught me how to
23 tie my shoes, taught me how to ride a bike.

24 THE COURT: Good memories.

25 MS. J. BROWN: Yeah. Taught me how to swim. He

1 drowned me a couple of times -- like a lot of times. But,
2 yeah, we had fun times and I just, like, I feel like when he
3 passed, I lost my childhood.

4 THE COURT: Ma'am, let me suggest something to you.
5 And again, I appreciate what you're saying about how much you
6 loved your brother. But right now, you have an even more
7 important responsibility. And let me tell you what that
8 responsibility is is that that lady who brought you into this
9 world is grieving right now, and she's going to need you to be
10 strong, she's going to need you to be able to help her through
11 her most difficult times. She's going to need you to be all
12 that you can be to help her get through this. That's what
13 your responsibility is at this time. And it's a tough
14 responsibility.

15 You know, when you get older like me, you find that
16 your children actually are a lot more than you thought they
17 were. They actually become the parent, telling you what to
18 do. My children would tell me where I can go, believe it or
19 not. I'll say, I feel like I want to go to such and such a
20 place, and they'll say, Daddy, you can't go there. And you
21 know what I do, I listen. I listen because it's important for
22 them to understand how they can best protect me. And that's
23 your responsibility right now is to do all you can do and be
24 the person that you can be to help your mother get through the
25 grief that she will never get over. That's your obligation.

1 It's a tough obligation.

2 MS. J. BROWN: Yeah. I have been helping her, and
3 it's just not the same anymore. At Thanksgiving, Christmas,
4 everything is different because we, like, we don't really get
5 along, right -- I mean, we get along but, like, my brother
6 was, like, the glue. He just brought everybody together.

7 THE COURT: That's the way families are.

8 MS. J. BROWN: Yeah.

9 THE COURT: And your family is no different.

10 MS. J. BROWN: He's always, like --

11 THE COURT: The one who was trying to get everybody
12 to be together.

13 MS. J. BROWN: Yeah, he was always like trying to
14 keep us to stay together and stuff. And --

15 MS. BROWN: Y'all could have been friends.

16 MS. J. BROWN: Well, it's not going to be the same
17 anymore. And it changed my mom mentally. And it changed me
18 mentally. Like, I have a daughter now, and she never met my
19 brother, and that's really hard for me.

20 THE COURT: Understood.

21 MS. J. BROWN: And, like, a year after my brother
22 passed, my uncle passed away, too, to gun violence, too.

23 MS. BROWN: Come on, baby.

24 MS. J. BROWN: It's just --

25 THE COURT: I appreciate your words, ma'am. I

1 appreciate your words. Thank you.

2 MS. BROWN: He's going to get three meals a day,
3 every day. (Indiscernible.)

4 THE COURT: Any other evidence from the government?

5 MR. BEN'ARY: No, Your Honor.

6 THE COURT: Mr. Jenkins, any evidence, sir?

7 MR. JENKINS: No evidence, Your Honor. Your Honor,
8 I would note for the Court because I know this is something
9 that the Court appreciates that the -- Mr. Palma's mother and
10 father, and also other family and friend members are seated in
11 the court, Your Honor, in support of him.

12 THE COURT: Thank you, sir. Mr. Jenkins, before I
13 hear from you on your sentencing argument, I try to take in as
14 much as I can. And I can appreciate that your client
15 maintains his innocence as far as responsibility for this
16 particular act, but I watched him as I listened to the grief
17 that these three ladies articulated in very clear terms for
18 the Court, and he had no reaction. Even if you are a person
19 who did not do it, how can you not have heartache listening to
20 what these ladies said? I looked at his family members, they
21 had sympathy for him.

22 MR. JENKINS: Yes, Your Honor.

23 THE COURT: And they reacted. They were sad for
24 these ladies over here.

25 MR. JENKINS: Your Honor, I will --

1 THE COURT: But your client was not.

2 MR. JENKINS: Your Honor, even at the risk of maybe
3 even violating privilege, I will share with the Court that I
4 gave Mr. Palma Flores certain direction. And he acted
5 consistent with the direction that I gave him, because I --
6 you know, my -- my preference would be, and unfortunately,
7 over the past 30 years, have had the displeasure to be in this
8 position on far too many times. And representing a defendant
9 who has been convicted of taking the life of someone's loved
10 one. And I've had some situations where things have turned.

11 THE COURT: Ladies, I need to be able to listen to
12 the defense counsel, so I appreciate your patience here.

13 MR. JENKINS: Where things have turned poorly
14 because it may be perceived by others, family members, that
15 the defendant is responding in a way that displeases them, and
16 then an eruption occurs. There are times in which the
17 defendant may not be trusted to restrain his own emotions and
18 know how to respond. So I gave Mr. Palma Flores some clear
19 instructions, and I believe, based on my observations, he
20 acted consistent with that. That might not necessarily speak
21 to how he feels at this moment.

22 THE COURT: Thank you.

23 Government's argument on sentencing.

24 MR. BEN'ARY: The taking of a human life is -- has
25 the largest impact of any crime in our system, and you heard

1 exactly why. This defendant, when he decided to lure
2 Mr. Brown out of the apartment and shoot him, unarmed sitting
3 on the steps, sentenced him to life. He gave him a life
4 sentence. They are going to have to deal with their loved one
5 not being around from here until the end of time, and that's
6 not fair. And it's not fair in a way that can't be addressed
7 by the sentence that the Court imposes here. Nothing changes
8 that life sentence. And that's a really tough pill to swallow
9 for someone -- or for people that are working in public
10 safety. But there's just not an adequate sentence under the
11 law for -- for the -- to address the harm of the crime, which
12 puts the Court in a difficult position in figuring out what
13 the right thing is to do.

14 But I would suggest to you that the sentence that
15 the government recommends is closer to the mark here than the
16 lighter, lower sentence that the defense recommends. And --
17 so a couple of reasons I say that. Throw the guidelines out
18 the window. You know, the guidelines recommend life but I'm
19 not sure that it matters all that much. Because what you
20 have -- what the 3553(a) factors tell the Court to do is
21 address the nature and circumstances of the offense. You take
22 somebody's -- you take somebody else's life, how do you
23 measure what the consequence should be? I think when people
24 think about it -- when people outside the justice system think
25 about it, if you ask him, they probably would say, if you take

1 somebody's life, you should get a life sentence.

2 THE COURT: And let me ask this. And this is the
3 difficult thing that the Court needs to do is that I've got a
4 kid in front of me.

5 MR. BEN'ARY: Yup.

6 THE COURT: Now, he may be a grown man for purposes
7 of sentencing, but I've got a kid in front of me who has
8 ruined his life, ruined his family's life, ruined these
9 people's lives; and so, what purpose do I accomplish directly
10 by saying that he should, in essence, forfeit the rest of his
11 life?

12 MR. BEN'ARY: I totally -- totally get it. And I
13 think that Mr. Palma's youth is a large mitigating factor, and
14 that, frankly, is probably the -- the number one determination
15 that led the government to recommend a downward variant
16 sentence on a murder trial that went to trial and denies
17 responsibility. So you've got that on the mitigating side of
18 the house.

19 Also, on the mitigating side of the house -- and it
20 was sort of mentioned here -- but Mr. Brown was engaged in
21 dangerous conduct. He voluntarily engaged in dangerous
22 conduct. Not at all to say that he deserved what he got to
23 the contrary. I don't think anybody deserves to be shot in
24 cold blood unarmed. But that is a mitigating factor. So
25 when -- I think most people would say, All right, you kill

1 somebody; you get a life sentence. Here's -- there are two
2 major factors that would leave the government to recommend
3 something less than that in this case.

4 On the aggravating side of the house, and sort of
5 what brings us back up to 50 years as opposed to something
6 lower than 50 years, there are -- well, I guess, it's a -- one
7 huge, related consideration that I know the Court sees, but
8 let me articulate it, is the notion of redemption. Everyone
9 is capable of redemption. Qwa Brown, Your Honor, was involved
10 in dangerous conduct, as I just said. He deserved a chance to
11 become something more than he was when he was killed. And
12 Mr. Palma took that from him. He could have been redeemed.
13 But now he can't, because the defendant chose to end his life.

14 The defendant is capable of being redeemed.
15 Mr. Palma is capable. Everyone is capable of being redeemed.
16 But redemption has to start with the acceptance of
17 responsibility.

18 I don't believe, Your Honor, that someone can be
19 redeemed and rehabilitated if they never take responsibility
20 for engaging in the bad conduct to begin with. And I
21 understand the Court's point about having the right to go to
22 trial, certainly. Everyone has the right to go to trial. I
23 don't think you have the right to try and frame an innocent
24 person for the murder that you committed by tampering with
25 witnesses and perjuring yourself. And I think that that

1 speaks directly to whether the defendant will be
2 rehabilitated. And I know we're asking for a long time, but
3 as we sit here with the defendant having never expressed
4 remorse, never accepted responsibility, I don't believe that
5 he can be rehabilitated to a degree that would make the Court
6 feel satisfied that he would not continue to be a risk to
7 public safety if released. I understand he was extremely
8 young when he committed this act, and it's reflected by our
9 recommendation which is less than life, but he certainly knew
10 that what he was doing was dangerous conduct and was conduct
11 that was not going to be reversible.

12 He went through several steps that night to lure
13 Xyqwavius Brown out. He did lure him out. He went and
14 approached him on the steps of that building with one purpose
15 and one purpose only, and that was to shoot and kill him. He
16 never made it off the steps. And, you know, our evidence
17 suggested that Xyqwavius Brown was struck by a bullet first to
18 the arm, then doubled forward and was struck a second time by
19 a bullet to the top of the head and that he was still alive
20 when paramedics got there.

21 Probably capable of feeling pain. And a pain that
22 Mr. Palma would likely never have to endure. I think the
23 Court sentence has to address all of that. And I fully expect
24 the Court to give mitigation credit to the defendant for his
25 young age and for the fact that Mr. Brown was also involved in

1 dangerous conduct. But you're also dealing with someone
2 that's going to continue to be a risk to the community because
3 he's never accepted responsibility for his actions, and you've
4 got to have a sentence that shows the Brown family and the
5 general public that our legal system puts a premium on the
6 value of human life, even when that human life is up to stuff
7 that puts that human life in danger. Mr. Brown was capable of
8 redemption.

9 THE COURT: Thank you, sir.

10 Mr. Jenkins.

11 MR. JENKINS: Yes, Your Honor.

12 Your Honor, I'll start by stating the obvious. And
13 that is that I certainly am pleased that it seems like the
14 government as well as the Court, no matter how difficult this
15 case is and the issues that are presented, all recognize that
16 this is not a case in which one-size-fits-all. There's a
17 reason why Congress has afforded this Court some discretion in
18 terms of determining the appropriate sentence. This is not a
19 case where someone who was convicted under an 1111 statute
20 offense where it's mandatory life. That's not what the Court
21 has before it. And that's because Congress recognizes that
22 someone convicted under Count 2 in this situation, the Court
23 should weigh a number of factors in determining what the
24 appropriate sentence is. And, yes, as we detail in our
25 sentencing memorandum, we do believe that the fact that

1 Mr. Palma Flores was 18 years and 7 days old at the time of
2 this offense is worthy of the Court's consideration.

3 We do believe --

4 THE COURT: Mr. Jenkins, I will never criticize a
5 person's determination to go to trial. That's an individual
6 personal right. A thing that a person has to do based upon
7 their own measured and guided circumstances. A good person
8 who is in a circumstance similar to your client would listen
9 to his lawyer, except that maybe he did something that he
10 should not do. Evaluate the circumstances that are presented.
11 Understand the weight of the evidence that is likely to be
12 presented against him after consultation with his lawyer. And
13 instead of doing those things -- I think this is a fair
14 evaluation -- instead of doing these things, he decides to
15 chart his own course, not listen to his lawyer, tamper with a
16 witness and do things which absolutely undermines the ability
17 of the Court to do anything for him in consideration.

18 I was aware that there was a negotiated resolution
19 in this case that hindsight would say that was very, very
20 fair. And your client chose not to do that. Again, that's
21 his prerogative.

22 MR. JENKINS: Yes.

23 THE COURT: But instead of choosing not to do this
24 and helping with an adequate defense that you tried to present
25 for him, he did other things which undermined the ability for

1 this Court to have any real care or concern about him, other
2 than for his youth and other than for his family that are
3 grieving because of what he did. And so, what kind of message
4 does the Court send?

5 MR. JENKINS: Yes, Your Honor.

6 THE COURT: And I hope you can help me with this.

7 MR. JENKINS: Your Honor, that's a -- that
8 definitely is a fair point to raise. But I'll take the Court
9 back 30 years or so ago when you and I practiced side by side
10 together in Prince William County in the juvenile domestic
11 relations court before you took the bench there. I think you
12 would agree with me that one of the most difficult,
13 challenging circumstances that we confront in representing
14 young people is their ability to do all those things you just
15 identified, to give fair and honest evaluation to the facts
16 and the circumstances that they're confronted with.

17 THE COURT: Uh-huh.

18 MR. JENKINS: Their age alone, their immaturity
19 alone. In this very courtroom, I've had the displeasure to
20 represent a 17-year-old charged with capital murder, having
21 difficult conversations with him and trying to get him to
22 understand what the facts and circumstances were that he faced
23 and get him to appreciate it. See, it's one conversation to
24 have that with a 17-year-old or an immature 18-year-old and a
25 whole different conversation to have it with a 32-year-old

1 person who has been in and out of the system.

2 The question is whether or not Mr. Palma Flores or
3 anyone similarly situated has the capacity to do just what the
4 Court suggested it would expect. In my almost 30 years of
5 practicing -- of representing people like Mr. Palma Flores,
6 that is 16-years-old, 15-year-old, 17-year-old, 18-year-old
7 charged with some of the most serious offenses our society
8 condemns. That's my greatest challenge, to get them to
9 understand. I tried to use family and friends. People who
10 they know far longer than what Mr. Palma Flores has known me.
11 They engaged him in conversation also, Your Honor. They tried
12 to bring some value to my representation in Mr. Palma Flores.
13 But none of that changes the fact of who he is; 18 years old
14 and 7 days. 30 days, approximately five weeks from now, he'll
15 turn 21. He's still five weeks away from his 21st birthday.

16 As we identified in our sentencing paper, Your
17 Honor, this is just unfortunately not uncommon. An uncommon
18 experience. It's something that we as our society grapple
19 with. What do we do with really young people who commit
20 really serious crimes? Once upon a time, it was permissible
21 in this country to send them to automatic life. The Supreme
22 Court has now told us that's not appropriate. That we have to
23 take in account their age. Now --

24 THE COURT: And there's also been -- you know, what
25 you talked about, us practicing together 30 years ago. 30

1 years ago if you had a person that was 17, there would
2 actually be a determination as to whether or not their case
3 should be certified to be tried as an adult. And so we had
4 that option back in the day, and we've grown to some degree
5 where we're no longer killing children.

6 MR. JENKINS: Children.

7 THE COURT: Right. But I think the legislature has
8 essentially said that the sweet spot is we're not going to
9 allow the government to take a life, but the bottom line is if
10 you meet that threshold of 18 years old, we're going to make
11 you bear the consequences of anyone else who commits a crime
12 and potentially mitigated by considering your youth.

13 MR. JENKINS: That's right. And I think that's
14 fair, Your Honor. I think we're in a better place today than
15 where we were 30 years ago, Your Honor. I think we're in a
16 better place today than where we were 15 years ago when, you
17 know, again, I was confronted with representing individuals
18 like Mr. Palma Flores where there wasn't really much I could
19 say at sentencing because the statute said life. And that's
20 it.

21 But I think the law recognizes that if Mr. Palma
22 Flores was seated before you and he was 35 years old, that it
23 would be fair for you to look at him differently and to treat
24 him differently. That if he was 45 years old and had six
25 prior felony adult convictions, it would be fair for you to

1 look at him and treat him differently. And that's all what
2 we're asking you to do here today, Your Honor, is when you
3 take into account his age and as the government properly
4 identified, both of these young men -- in fact, I would
5 submit, Your Honor, every young person that testified in this
6 case was living a life that you and I and Mr. Ben'Ary and
7 Ms. Rumbaugh as parents never would want our children to be
8 engaged in. All of them. All of them were engaged in this
9 lifestyle. Marijuana consumption, alcohol abuse, gunplay,
10 robberies; they all were engaged in it. And it is so sad and
11 so unfortunate. And Mr. Palma Flores, with respecting the
12 jury's verdict, he now has a price to pay. The only question
13 is, Your Honor, how much of a price?

14 Mr. Ben'Ary talked about redemption. We identified
15 in our moving papers, Your Honor. Statistics tell us this,
16 that the Melvin Palma Flores before you today is unlikely to
17 be the same Melvin Palma Flores 20 years from now. That's
18 true with all of us. And statistics tell us, the Bureau of
19 Prisons' statistics, the U.S. Sentencing Commission statistics
20 all tell us that 20 years from now he would be less likely to
21 engage in violent behavior than what he is today. Statistics
22 tell us that 20 years from now, 25 years from now, he will be
23 better equipped to make better decisions than what he was two
24 years ago.

25 It all points us to the point that the Court can

1 take some solace, some comfort in knowing that if you do grant
2 him some grace and not impose a sentence consistent with the
3 guidelines or even one recommended by the government --
4 because I would suggest, Your Honor, that's functionally life.
5 Given his age, given his demographic, given what life
6 expectancy would be for a young Hispanic male in the Bureau of
7 Prisons system, 50 years is effectively life.

8 If the Court has concluded in its mind -- and I
9 don't assume that you have -- that Mr. Palma Flores should not
10 be sentenced to life in prison, then I would submit that 50
11 years is also inappropriate. That something less than that
12 would be appropriate.

13 This young man still has a lot of life to live. He
14 still has the opportunity, as Mr. Ben'Ary says, to redeem
15 himself. He still has the opportunity to perhaps play a
16 meaningful role in his own son's life. He still has the
17 ability to serve as an example to that son if not what to do,
18 what not to do. Because regardless of whether or not
19 Mr. Palma Flores accepts responsibility for taking Mr. Brown's
20 life, I am confident of this that Mr. Palma Flores, during the
21 course of my time knowing him, regrets engaging in drug
22 dealing, using guns, and the lifestyle that he lives. He
23 regrets that he will not be there for his own son. He regrets
24 that, Your Honor.

25 And if he could take it all away, if he could wave a

1 magic wand and never start consuming marijuana, never turn to
2 alcohol, never get involved with firearms, I am confident he
3 would make that decision, Your Honor. I know this is a
4 difficult decision, Your Honor, with all that you have to
5 balance. I feel for the Brown family. I understand that they
6 are hurting. I do. I really do, Your Honor.

7 But this was a young man who was 18 years old and 7
8 days. Still shy of his 21st birthday. We think, Your Honor,
9 that the sentence that we have recommended would certainly
10 satisfy the 3553(a) factors. It would not bring Mr. Brown
11 back. No, it would not. And it would not give any of us
12 100 percent certainty that Mr. Palma Flores would not engage
13 in violent acts again. But your job, Your Honor, isn't about
14 mathematical certainty. It's about exercising judgment based
15 on the available evidence you have.

16 THE COURT: And doing justice.

17 MR. JENKINS: And doing justice.

18 THE COURT: Thank you, sir.

19 MR. JENKINS: Thank you, Your Honor.

20 THE COURT: Mr. Palma Flores, you may stand, sir.

21 Is there anything you want to say before the Court sentences
22 you in this matter?

23 THE DEFENDANT: First and foremost --

24 THE COURT: You can remove your mask if you're fully
25 vaccinated, sir.

1 THE DEFENDANT: I'm not vaccinated, Your Honor.

2 But first and foremost, I would like to send my
3 condolences to the Brown family.

4 THE COURT: Just a moment, sir.

5 Ms. Rumbaugh, I'm going to ask you to sit in the
6 jury box.

7 MS. RUMBAUGH: Yes, Your Honor.

8 THE COURT: Thank you.

9 Thank you for that hesitation, sir. Go ahead.

10 THE DEFENDANT: First and foremost, I would like to
11 send my condolences to the Brown family. Following
12 Mr. Jenkins instructions, it's a lot I would like to say, but
13 he, as my counsel, has advised me to remain silent.

14 Thank you, Your Honor.

15 THE COURT: You're sure there is nothing else you
16 want to say? Do you want to say something to your family?
17 They are here for you. You at least need to let them know how
18 much you appreciate them supporting you in your worst moment.
19 So if you want to face your family and say something to them,
20 this is your time.

21 THE DEFENDANT: Mama, I appreciate y'all for
22 everything y'all have done for me. And I would like to
23 apologize for any hurt and pain and agony I have inflicted
24 upon you guys.

25 THE COURT: You can say it in your native language

1 to them if you wanted to make sure they can understand.

2 THE DEFENDANT: I can't. I can't do this.

3 THE COURT: All right, sir. You can have a seat
4 beside your counsel.

5 You can remain seated as I go through the sentencing
6 disposition.

7 MR. JENKINS: Yes, Your Honor.

8 THE COURT: Under the sentencing guidelines, the
9 base offense level is 43. I appreciate counsel and the
10 probation department providing information to the Court to
11 address some concerns that the Court had with regard to the
12 calculation of the sentencing guidelines. The Court finds
13 that in this case the requirements of sentencing guidelines
14 Section 3E1.1 are not satisfied as the defendant has not
15 clearly demonstrated acceptance of responsibility for the
16 offense. Therefore, the base level offense remains at 43.

17 The criminal history score is 3 and the criminal
18 history category is 2. Accordingly, the sentencing guidelines
19 advise a term of life imprisonment.

20 The supervised release period is a supervised
21 release range of two to three years on Counts 1, 2; two to
22 five years on Count 2; one to three years on Count 3. The
23 fine range is 50,000 to \$250,000.

24 Pursuant to the factors under 18. -- 18 U.S.C.
25 3553(a), the Court should consider the following: The nature

1 and circumstances of the offense, and the history and
2 characteristics of the defendant. Two, the need for the
3 sentence imposed to, among other things, reflect the
4 seriousness of the offense and adequately deter criminal
5 conduct. Three, the kinds of sentences available. Four, the
6 guidelines. Five, policy statements issued by the sentencing
7 commission. Six, the need to avoid unwarranted sentencing
8 disparities among defendants with similar records found guilty
9 of similar conduct. And seven, the need to provide
10 restitution to the victim of the offense.

11 Ultimately, as the Court has pointed out several
12 times, the sentence imposed must meet the standard of
13 reasonableness under *United States v. Booker*.

14 With respect to the nature and characteristics, and
15 circumstances of the offense, and the history and
16 characteristics of the defendant, the defendant was found
17 guilty of a grave offense by using a firearm in furtherance of
18 a drug trafficking crime resulting in death.

19 The jury found that he killed a young man over \$200
20 worth of marijuana. He cut short the life of Mr. Brown and in
21 so doing not only took the life of another but robbed
22 Mr. Brown's family of spending many precious years together
23 with their loved one.

24 What is more, the defendant attempted to deflect
25 responsibility, as the jury found, for his actions by blaming

1 someone else for the murder, and later undermining the
2 judicial process by tampering with a witness. Words cannot
3 convey the grief the defendant's senseless act of gun violence
4 has caused this victim's family and the Court's sentence must
5 address this wrong.

6 The Court does, however, attempt to address this
7 tragic nature and circumstances of the defendant's crimes by
8 considering the following: The need for the sentence to
9 reflect the seriousness of the offense, to promote respect for
10 the law, and to provide just punishment for the offense. To
11 afford adequate deterrence of criminal conduct. To protect
12 the public from further crimes of the defendant. And to
13 provide the defendant with the needed educational and
14 vocational training, medical care, or other correctional
15 treatment in the manner most effective. The Court finds the
16 defendant committed crimes justifies a significant sentence of
17 imprisonment.

18 The guideline range for such an offense is a term of
19 life imprisonment. The Court has three separate counts before
20 it. Count 1, Count 2, Count 3, all having different
21 sentencing variations. With respect to Count 1, the
22 sentence -- the Court -- is that the defendant serve 60 months
23 incarceration.

24 With respect to Count 3, the Court says that the
25 defendant shall serve a term of 240 months incarceration,

1 which will run concurrent. And with regard to Count 2, the
2 most serious crime, obviously, of the things involved, the
3 Court sentences the defendant of 540 months incarceration.

4 These sentences fall below the advisory guideline
5 range and, of course, will not warrant any unwarranted
6 sentencing disparities and is in line with other sentences
7 that have been imposed in like cases involving Section 924(j)
8 offenses in the Eastern District of Virginia.

9 Accordingly, the Court's total sentence is 540
10 months imprisonment.

11 During this period of incarceration, the defendant
12 must comply with the standards and conditions that have been
13 adopted by this Court as well as the following special
14 conditions: The defendant shall apply all monies received
15 from any income tax refunds, lottery winnings, inheritances,
16 judgments, and any anticipated or unexpected financial gains
17 to the outstanding court order financial obligations, or a
18 lesser amount to be determined by the Court upon
19 recommendation of the probation officer.

20 The defendant shall provide the probation officer
21 access to any requested financial information. If the
22 defendant tests positive for controlled substances or shows
23 signs of alcohol abuse, the defendant shall participate in a
24 program approved by the United States probation officer for
25 substance abuse. Which program may include residential

1 treatment and testing to determine whether the defendant has
2 reverted to the use of drugs or alcohol, with partial cost to
3 be paid by the defendant, all is directed by the probation
4 officer.

5 The defendant shall participate in a program
6 approved by the United States probation office for mental
7 health treatment to include anger management. The cost of
8 this program is to be paid by the defendant as directed by the
9 probation department.

10 The defendant shall not use marijuana or cannabis in
11 any form. Recognizing that the defendant is likely not
12 capable of paying the minimum fine prescribed by the statute,
13 the Court declines to impose a fine. However, the Court must,
14 pursuant to statute, impose a special assessment of \$300, \$100
15 for each felony offense for which the defendant was convicted,
16 pursuant to 18 U.S.C. 3013.

17 The provisions of the Mandatory Victim Restitution
18 Act of 1996 apply to this offense. Today it appears that no
19 restitution request has been filed. I'll ask counsel for the
20 government to inquire of the victim's family as to whether or
21 not they want to pursue any remedies they may have under that
22 particular act.

23 MR. BEN'ARY: We have, Your Honor, and have not
24 received information back on that.

25 THE COURT: Do you want to set a close date on that?

1 MR. BEN'ARY: Sure, that would be great.

2 THE COURT: 30 days?

3 MR. BEN'ARY: That's more than enough. Thank you.

4 THE COURT: The defendant is advised that he may
5 appeal any portion of this Court's sentence and notice of
6 right to appeal form is inapplicable to this case and that the
7 defendant was convicted by a jury of his peers.

8 Mr. Jenkins, I will request that you advise the
9 defendant of any constitutional rights he has with regard to
10 appeal. If he requires court appointed counsel, I would ask
11 that you facilitate making sure that that happens so that he
12 can properly note his appeal to any court of record.

13 MR. JENKINS: Yes, Your Honor.

14 Your Honor, may it please the Court. I have
15 discussed with Mr. Palma Flores his right to appeal. He would
16 ask that the Clerk of Court, at this point in time, note his
17 appeal with the understanding that counsel will file a written
18 notice of appeal.

19 THE COURT: Any objection to that, Mr. Ben'Ary?

20 MR. BEN'ARY: No, Your Honor.

21 THE COURT: The Court will recommend that the
22 defendant be designated to a Bureau of Prisons facility that
23 is located near the Washington, D.C. metropolitan area. And
24 the Court will also recommend the defendant be evaluated for
25 participation in any substance abuse treatment program for

1 which you may qualify including the RDAP program.

2 Mr. Palma Flores, the jury has determined in your
3 circumstances that you're responsible for a lot of pain.
4 Again, you are entitled to maintain your innocence. I'm not
5 in any way undermining your right to maintain your innocence,
6 but there's a lot of hurt in this room, and a jury has found
7 that you're responsible for a lot of this hurt.

8 You've heard the statements from Mr. Brown's family,
9 and you've seen the pain that your own family is going
10 through, recognizing that this is a terrible day for them as
11 they will not be able to fulfill their lives spending it with
12 you in the way that traditional families do. But you do have
13 some life left. I didn't give you life imprisonment. I could
14 have. And there was a temptation to do that, but I considered
15 your age, and I've considered the circumstances of this case,
16 and essentially given you some degree of grace in this case.
17 But you do have a significant price to pay, and I hope that
18 you make the best of the opportunity that you have for the
19 rest of your life.

20 Do you have any questions, sir?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: All right. The supervised release
23 period of five years as to Count 2, and three years as to
24 Counts 1 and 3. All concurrent, Mr. Jenkins.

25 MR. JENKINS: Thank you, Your Honor.

1 THE COURT: Very good.

2 (Discussion off the record.)

3 THE COURT: Mr. Ben'Ary, because of the circumstance
4 with regard to providing that information under the Victim
5 Restitution Act (sic), the sentence does not become final
6 until I get everything.

7 Do you want to shorten the period of time for that,
8 sir?

9 MR. BEN'ARY: I'm satisfied, Your Honor. We have
10 discussed this with the Brown family, and they've had months
11 of opportunity to provide restitution information. I'm
12 confident that we're not going to have --

13 THE COURT: The Court, accepting the government's
14 representation that it has taken all necessary steps to ensure
15 that the parties involved are able to take advantage of the
16 ability to pursue remedy under the compensation act and having
17 been given due time to fulfill that obligation so that the
18 Court can consider that, declines to impose a restitution
19 obligation.

20 MR. JENKINS: Your Honor, I would ask, Your Honor,
21 if the Court would consider, nevertheless, still suspending
22 the imposition or finalizing the judgment and commitment
23 order. As the Court may recall, the Palma Flores family
24 retained our office in order to handle the trial in this
25 matter. We have been engaged in some discussions about their

1 ability to do so on direct appeal. If the Court were to delay
2 entry of the judgment and commitment order, that would afford
3 them some additional time.

4 THE COURT: And this comes on your client's motion?

5 MR. JENKINS: Yes, Your Honor.

6 THE COURT: All right. Recognizing that this comes
7 on the defendant's motion for, in a sense, slowing down the
8 effectuation of the Court's order in this regard, I will grant
9 the defendant's motion to slow the process down.

10 How long do you think you need, Mr. Jenkins?

11 MR. JENKINS: Your Honor, I think three weeks should
12 be enough time to have some clarity. If they are unable to
13 afford counsel, then I will certainly note to the Court,
14 because Mr. Palma Flores then would be seeking court appointed
15 counsel.

16 THE COURT: All right. The Court is going to direct
17 that the information supporting that determination be provided
18 to the Court no later than Friday, September 30th, close of
19 business. Friday, September 30th, close of business.

20 Mr. Jenkins, because I want to make sure that there
21 is no confusion with regard to the Court's obligation to
22 notify your client of his right to appeal, that I am depending
23 on you to effectuate what needs to happen, so that there are
24 no glitches in the process.

25 MR. JENKINS: Absolutely. Yes, Your Honor.

1 THE COURT: Mr. Ben'Ary, anything else we need to
2 do, sir?

3 MR. BEN'ARY: No, Your Honor. We'll speak to the
4 Brown family, again, about restitution. And if we get it, we
5 will submit to chambers --

6 THE COURT: Was there any money recovered as part of
7 the investigation of this matter?

8 MR. BEN'ARY: Not that I recall.

9 MR. JENKINS: I don't think so, Your Honor.

10 THE COURT: Okay. Well, maybe if you can speak with
11 the case agent to see if any money has been recovered. As
12 part of that, one of the things that there was indeed some
13 money recovered, maybe that can help to pay for the expenses
14 that were caused by Mr. Brown having to be buried or cremated.

15 MR. BEN'ARY: Understood. Thank you, Your Honor.

16 THE COURT: All right.

17 Anything else from the probation department?

18 THE PROBATION OFFICER: No, Your Honor.

19 THE COURT: All right. Thank you.

20 Remand you to the custody of the United States
21 Marshals.

22 If he wants, he can stand there and say goodbye to
23 his family. If he wants to. If he wants to, he can face his
24 family and say goodbye.

25 THE MARSHAL: Is he allowed to have contact with

1 them, or just talk to them -- just communication --

2 THE COURT: Right there.

3 (Defendant complies.)

4 THE COURT: I thank the United States Marshal for
5 that consideration.

6 All right. We're done.

7 **(Proceedings adjourned at 1:01 p.m.)**

ROUGH DRAFT

CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Sentencing hearing in the case of the **UNITED STATES OF AMERICA versus MELVIN PALMA FLORES**, Criminal Action No.: 1:20-cr-142, in said court on the 7th day of September, 2022.

I further certify that the foregoing 65 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this June 10, 2023.

Tonia M. Harris, RPR
Official Court Reporter